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In re Patent No. 6,984,651	:	
Duncia, et al.	:	
Issue Date: January 10, 2006	:	DECISION ON
Application No. 10/635,946	:	PATENT TERM ADJUSTMENT
Filed: August 7, 2003	:	
Attorney Docket No. PH-7167	:	

This is a decision on the "REQUEST FOR RECONSIDERATION ON PETITION TO CORRECT PATENT TERM ADJUSTMENT", filed September 21, 2006. Patentees request that the patent term adjustment indicated on the patent be corrected from zero (0) days to one hundred fourteen (114) days.

The application for patent term adjustment is **DISMISSED**.

On January 10, 2006, the above-identified application matured into U.S. Patent No. 6,861,091. The Patent issued with a Patent Term Adjustment of zero (0) days. Patentees timely filed an application for patent term adjustment on March 8, 2006. Patentees stated that they should not have been assessed applicant delay of one hundred twenty (120) days for the submission of a "Letter to File" after the Notice of Allowance. However, the application for patent term adjustment was dismissed in a decision mailed on August 21, 2006.

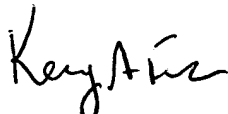
The decision cited to the Official Gazette Notice dated June 26, 2001, where the Director has advised applicants and patentees that the filing of certain papers after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). The decision pointed out that applicants' "Letter to File", transmitting a reference cited in an EP communication in the corresponding European application, was more analogous to those types of papers that were considered to be a "failure to engage in reasonable efforts" to conclude processing or examination of an application (in particular, a certified copy of a priority document).

On request for reconsideration, patentees argue that the rules do not allow for the submission of an IDS after payment of the issue fee. In addition, patentees assert that the submission of a "Letter to the File" along with the reference did not require any action on the part of the Office other than placing the letter in the file.

Patentees' argument has been considered, but is not persuasive. Although patentees are correct in that the IDS is not considered by the examiner (see MPEP 609.04(b)(IV)), nevertheless the Office must review the document to ascertain exactly what the document is that was submitted.

In view thereof, the correct determination of PTA at the time of issuance is **zero (0)** days (1114 days of PTO delay, reduced by 153 (120+33) days of applicant delay).

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



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